

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 56 OF 2001

OFFICIAL LIQUIDATOR
HIGH COURT OF BOMBAY,
PANAJI.

..... Applicant

V e r s u s

1. Shipriyan M. Rodrigues,
Girkar Wada,
Harmal, Goa.

2. Umeshkant U. Tari,
H.No.170/1,
Ekoshi Bhattan,
Betim,
Bardez, Goa.

3. Marcus X. Carvalho,
H. No. 76,
Devsu, Korgao,
Pedne, Goa.

..... Respondents

Ms. Amira Razaq, Advocate for the Applicant/Official Liquidator.

Mr. E. P. Lobo, Advocate for Respondent no.1.

Respondent nos. 2 and 3 are Exparte.

CORAM: N. A. BRITTO, J.

DATE: 29th September, 2006.

ORAL JUDGMENT

Heard Ms. Amira Razaq on behalf of the Applicant/Official Liquidator and Shri E. P. Lobo on behalf of respondent no.1.

2. The claim of the Applicant/Official Liquidator arises out of a loan of Rs.1,90,000/- availed by respondent no.1 with respondent nos. 2 and 3 standing as sureties for him. The said loan amount was disbursed on 08.03.1996, 18.03.1996 and 01.04.1996. There is no dispute that the respondent no.1 had availed of the said loan. The question raised was only as regards the payment of interest, which according to the respondent no.1, was not correctly calculated. At the request of the Court, a fresh calculation of interest at the rate of 20%, after taking into account the instalments paid by respondent no.1 from time to time, was produced and the said statement shows that as on 08.10.1998, the respondents were liable to pay to the Applicant/Official Liquidator a sum of Rs.1,76,903.55. Parties do not dispute that the said figure has been arrived at by calculating interest payable by the respondents at the rate of 20%.

3. However, the grievance of Shri Lobo, the learned Counsel on behalf of the respondent no.1, is that, the Company in liquidation had taken from respondent no.1 a deposit of Rs.55,000/- towards the grant of the said loan. Shri Lobo submits that respondent no.1 would be entitled to interest on the said amount of Rs.55,000/-. However, Shri Lobo fairly concedes that there is no document indicating that the said amount of Rs.55,000/- was accepted by the Company in liquidation and respondent no.1 would be entitled for payment of interest thereon. On behalf of the Applicant/Official Liquidator, a declaration signed by respondent no.1 was produced in evidence. The said declaration also does not state that on the said deposit of Rs.55,000/-, respondent no.1 would be entitled to any interest. It appears that the said sum of Rs.55,000/- remained with the Company in liquidation and only after the order of winding up, that the Applicant/Official Liquidator adjusted the said amount of Rs.55,000/- pursuant to the Orders of this Court, towards the loan account of respondent no.1. Ms. Razaq, the learned Counsel on behalf of the Applicant/Official Liquidator submits that the deposit of Rs.55,000/- was one of the conditions of the loan being disbursed to the respondent no.1, and therefore, the respondent no.1 would not be entitled to any interest on the said amount. As already stated, the said declaration, does not show any

stipulation as regards interest nor the respondent no.1 in his evidence has made a claim for payment of interest on the said amount of Rs.55,000/-, which respondent no.1 had deposited with the Applicant/Official Liquidator by way of loan security deposit. In the absence of any stipulation for the payment of interest in any of the documents produced on behalf of the applicant, in my view, respondent no.1 would not be entitled to claim for interest on the said amount of Rs.55,000/- since it was deposited as a loan security deposit.

4. Shri Lobo, the learned Counsel on behalf of the respondent no.1 has submitted that when the claim of the applicant/Official Liquidator was placed before the Lok Adalat, the respondent no.1 had agreed to pay an amount of Rs.1,00,000/- towards the final settlement of the claim made by the applicant/Official Liquidator. Admittedly, the said offer was not accepted by the applicant/Official Liquidator and hence the matter was returned to the Court to be decided on merits. The said offer cannot be taken into consideration by this Court at present. The Court is required to decide the claim on merits of the same.

5. On the basis of the evidence led on behalf of the applicant and

the documents produced by him, the claim of applicant/Official Liquidator is hereby decreed for the recovery of a sum of Rs.1,20,903.55, with pending interest at the rate of 20% and future interest at the rate of 8%, with costs jointly and severally against all the respondents.

N. A. BRITTO, J.

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